

### REMARKS

Claims 1-56 are pending in the application. Claims 17-33 have been withdrawn from consideration. Claims 57-74 are added in this Amendment. Claims 1-16 and 34-56 are rejected. Claims 1-17, 34-43, 50 and 52-54 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-11, 14-16, 34-38, 41 and 44-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (U.S. Patent No. 5,897,620) in view of the article "Hawaiian Air to Offer Tickets Through ATMs" from the Wall Street Journal (hereinafter referred to as "Hawaiian Air"). Applicant respectfully requests reconsideration of the Application in view of the amendments and remarks herein.

#### ***Claim Rejections – 35 U.S.C. § 101***

Claims 1-17, 34-43, 50 and 52-54 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the rejection argues that the claims do not apply, involve, use or advance the technological arts, because they are drawn to an abstract idea. However, the rejection acknowledges that the claims produce a useful, concrete, and tangible result (pg. 3, 3<sup>rd</sup> full paragraph).

Although Applicant disputes the assertion that the claims are drawn to an abstract idea, it has been well established that an abstract idea when practically applied to produce a useful, concrete, and tangible result satisfies § 101. *In re Musgrave*, 167 USPQ 280 (CCPA 1970); *In re Alapat*, 31 USPQ 2d 1545 (Fed. Cir. 1994); *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 47 USPQ2d 1596 (Fed. Cir. 1998). Accordingly, as the rejection asserts the claims are drawn to an abstract idea, and that they also produce a useful, concrete, and tangible result, a rejection under 35 U.S.C. § 101 is improper. Applicant, therefore, respectfully requests withdrawal of the rejection to claims 1-16, 34-43, 50 and 52-54 under 35 U.S.C. § 101.

Regarding the rejection to claim 17, claim 17 has been previously withdrawn from examination.

***Claim Rejections – 35 U.S.C. § 103***

Claims 1-11, 14-16, 34-38, 41 and 44-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (U.S. Patent No. 5,897,620) in view of the article "Hawaiian Air to Offer Tickets Through ATMs" from the Wall Street Journal (hereinafter referred to as "Hawaiian Air").

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2143. Applicant respectfully submits that there is no suggestion or motivation to combine the ticketing system of Walker with the open ticket of Hawaiian Air, and therefore the rejection to claims 1-11, 14-16, 34-38, 41 and 44-46 under 35 U.S.C. § 103(a) is improper.

The rejection has not shown a suggestion or motivation to provide the ticketing system of Walker with the open ticket of Hawaiian Air. Neither Walker nor Hawaiian air provide such a suggestion. In fact, Walker distinguishes an open ticket in its background (col. 1, lines 56-62).

Furthermore, using the open ticket of Hawaiian Air in the ticketing system of Walker, as proposed in the rejection, renders Walker inoperable, and thus unsatisfactory for its purpose as an airline ticketing system. Walker discloses a system by which airlines can fill seats that would otherwise have remained empty (col. 3, lines 24-27). In accordance with the Walker system, a traveler specifies a departure location, a destination location, and a time range for travel. The traveler's request is matched to special fare listings corresponding to travel between the requested departure and destination within the time range, but allowing the airline to specify the particular flight number and flight time (col.2, line 30-col. 3, line 23). A traveler's request involving an open ticket, as in Hawaiian Air, with at least one geographic flight parameter being unspecified cannot be matched to a special fare listing, however, because each special fare listing correlates to a seat on a flight for a specified departure/destination and day which is forecast to

be empty. Stated simply, without a specific route (i.e. departure/destination), the airline cannot determine the availability of a forecasted empty seat and correspondingly the availability of a special fare listing. More so, without knowing the both the departure and destination an airline cannot accurately determine a purchase price, because the traveler's open ticket request is indefinite. The traveler's request under the system proposed in the rejection amounts to asking "How much to fly on your airline?" versus the request disclosed in Walker "How much to fly from Dallas to D.C.?" Clearly, a system based on the system of Walker using the open ticket of Hawaiian Air is unworkable as a ticketing mechanism for an airline.

If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Accordingly, as incorporation of the Hawaiian Air open ticket into the system of Walker renders the system of Walker unworkable as a ticketing mechanism for an airline (i.e. unsatisfactory for its intended purpose), there is no suggestion to combine.

Applicant respectfully submits that the rejection to claims 1-11, 14-16, 34-38, 41 and 44-46 under 35 U.S.C. § 103(a) is improper for lack of a suggestion or motivation to combine Walker and Hawaiian Air. Therefore, Applicant requests withdrawal of the rejections under 35 U.S.C. § 103(a).

#### CONCLUSION

In light of the above, Applicant submits that the Application is in condition for allowance, and such a Notice is respectfully requested. If there are any outstanding issues, the Examiner is requested to telephone Applicant's counsel to resolve such issues.

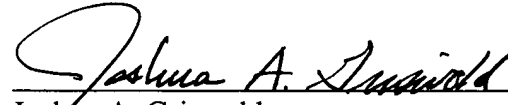
Enclosed is a Enter \$ amount check for excess claim fees and a Enter \$ amount check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

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Respectfully submitted,

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